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6 HON. JUDGE THOMAS S. ZILLY
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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
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11 GROUP14 TECHNOLOGIES, INC., Plaintiff,
12 v.
13 NEXEON LIMITED,
14 Defendant.

CASE NO. 2:22-cv-01354-TSZ

**STIPULATED
PROTECTIVE ORDER**

15. **PURPOSES AND LIMITATIONS**

16. Discovery in this action is likely to involve production of confidential, proprietary, or
17 private information for which special protection may be warranted. Accordingly, the parties hereby
18 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
19 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
20 protection on all disclosures or responses to discovery, the protection it affords from public
21 disclosure and use extends only to the limited information or items that are entitled to confidential
22 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
23 confidential information under seal.

1 2. DEFINITIONS

2 2.1 “CONFIDENTIAL” Information or Items: information (regardless of how it is
3 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
4 of Civil Procedure 26(c).

5 2.2 Designating Party: a Party or Non-Party that designates information or items that it
6 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

8 2.3 Disclosure or Discovery Material: all items or information, regardless of the
9 medium or manner in which it is generated, stored, or maintained (including, among other things,
10 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 2.4 Expert: a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who (1) has been retained by a Party or its Outside Counsel of Record to serve as an
14 expert witness or as a consultant in this action, (2) is not a past or current employee of a Party, and
15 (3) at the time of retention, is not anticipated to become an employee of a Party.

16 2.5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
17 Items: extremely sensitive “CONFIDENTIAL” information or items, disclosure of which to
18 another Party or Non-Party would create a substantial risk of serious harm.

19 2.6 Non-Party: any natural person, partnership, corporation, association, or other legal
20 entity not named as a Party to this action.

21 2.7 Outside Counsel of Record: attorneys who are not employees of a Party to this
22 action but are retained to represent or advise a Party to this action and have appeared in this action
23 on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

24 2.8 Party: any Party to this action, including all of its officers, directors, employees,
25 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

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1 2.9 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this action.

3 2.10 Professional Vendors: persons or entities that provide litigation support services
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
5 organizing, storing, or retrieving data in any form or medium) and their employees and
6 subcontractors.

7 2.11 Protected Material: any Disclosure or Discovery Material that is designated as
8 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 2.12 Receiving Party: a Party that receives Disclosure or Discovery Material from a
10 Producing Party.

11 3. SCOPE

12 The protections conferred by this agreement covers not only Protected Material (as defined
13 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
14 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
15 or presentations by parties or their Outside Counsel of Record that might reveal Protected Material.

16 However, the protections conferred by this Stipulation and Order do not cover the
17 following information: (a) any information that is in the public domain at the time of disclosure to
18 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
19 a result of publication not involving a violation of this Stipulation and Order, including becoming
20 part of the public record through trial or otherwise; and (b) any information known to the Receiving
21 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source
22 who obtained the information lawfully and under no obligation of confidentiality to the
23 Designating Party. Any use of Protected Material at trial shall be governed by a separate
24 agreement or order.

25 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

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1 4.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
2 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
3 defending, or attempting to settle this litigation. Protected Material may be disclosed only to the
4 categories of persons and under the conditions described in this Stipulation and Order. Protected
5 Material must be stored and maintained by a Receiving Party at a location and in a secure manner
6 that ensures that access is limited to the persons authorized under this Stipulation and Order.

7 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
8 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
9 information or item designed “Confidential” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
11 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
12 information for this litigation;

13 (b) the officers, directors, and employees of the Receiving Party to whom
14 disclosure is reasonably necessary for this litigation;

15 (c) Experts (as defined in this Stipulation and Order) of the Receiving Party to
16 whom disclosure is reasonably necessary for this litigation and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) Professional jury or trial consultants and Professional Vendors retained by
20 Outside Counsel of Record to whom disclosure is reasonably necessary for this litigation and who
21 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
24 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
25 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
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1 separately bound by the court reporter and may not be disclosed to anyone except as permitted
2 under this Stipulation and Order;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 **4.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**
6 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
7 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
10 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
11 for this litigation;

12 (b) Experts (as defined in this Stipulation and Order) of the Receiving Party (1) to whom
13 disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment
14 and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph
15 4.4(a), below, have been followed;

16 (c) the court, court personnel, and court reporters and their staff;

17 (d) Professional jury or trial consultants and Professional Vendors retained by Outside
18 Counsel of Record to whom disclosure is reasonably necessary for this litigation and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (e) during their depositions, witnesses in the action to whom disclosure is reasonably
21 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
22 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
23 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
24 bound by the court reporter and may not be disclosed to anyone except as permitted under this
25 Stipulation and Order; and

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1 (f) the author or recipient of a document containing the information or a custodian or other
2 person who otherwise possessed or knew the information.

3 4.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

5 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
6 a Party that seeks to disclose to an Expert (as defined in this Stipulation Order) any information or
7 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first
8 must make a written request to the Designating Party that (1) identifies the general categories of
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving
10 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the
11 city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume,
12 (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the
13 Expert has received compensation or funding for work in his or her areas of expertise or to whom
14 the expert has provided professional services, including in connection with a litigation, at any time
15 during the preceding five years, and (6) identifies (by name and number of the case, filing date,
16 and location of court) any litigation in connection with which the Expert has offered expert
17 testimony, including through a declaration, report, or testimony at a deposition or trial, during the
18 preceding five years.

19 (b) A Party that makes a request and provides the information specified in the preceding
20 paragraph may disclose the subject Protected Material to the identified Expert unless, within 14
21 days of delivering the request, the Party receives a written objection from the Designating Party.
22 Any such objection must set forth in detail the grounds on which it is based.

23 (c) A Party that receives a timely written objection must meet and confer with the
24 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
25 within seven days of the written objection. If no agreement is reached, the Party seeking to make
26 the disclosure to the Expert may file a motion as provided in under Local Civil Rule 7 (and in

1 compliance with Local Civil Rule 5(g), if applicable) seeking permission from the court to do so.
2 Any such motion must describe the circumstances with specificity, set forth in detail the reasons
3 why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure
4 would entail, and suggest any additional means that could be used to reduce that risk. In addition,
5 any such motion must be accompanied by a competent declaration describing the parties' efforts
6 to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
7 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to
8 approve the disclosure.

9 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
10 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
11 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

12 4.5 Filing Confidential Material. Before filing Protected Material or discussing or
13 referencing such Protected Material in court filings, the filing party shall confer with the
14 Designating Party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the
15 Designating Party will remove the confidentiality designation, whether the document can be
16 redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the
17 meet and confer process, the Designating Party must identify the basis for sealing the specific
18 Protected Material at issue, and the filing party shall include this basis in its motion to seal, along
19 with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the
20 procedures that must be followed and the standards that will be applied when a party seeks
21 permission from the court to file Protected Material under seal. A party who seeks to maintain the
22 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
23 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in
24 the motion to seal being denied, in accordance with the strong presumption of public access to the
25 Court's files.

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
3 or Non-Party that designates information or items for protection under this Stipulation and Order
4 must take care to limit any such designation to specific material that qualifies under the appropriate
5 standards. To the extent it is practical to do so, the Designating Party must designate for protection
6 only those parts of material, documents, items, or oral or written communications that qualify, so
7 that other portions of the material, documents, items, or communications for which protection is
8 not warranted are not swept unjustifiably within the ambit of this Stipulation and Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
11 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
12 and burdens on other parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it designated
14 for protection do not qualify for protection at all or do not qualify for the level of protection initially
15 asserted, the designating party must promptly notify all other parties that it is withdrawing the
16 mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this
18 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
19 ordered, Disclosure or Discovery Material that qualifies for protection under this agreement must
20 be clearly so designated before or when the material is disclosed or produced. Designating in
21 conformity with this Stipulation and Order requires:

22 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
23 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
24 the Designating Party must affix the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
25 ATTORNEYS' EYES ONLY" to each page that contains Protected Material. If only a portion or
26 portions of the material on a page qualifies for protection, the producing party also must clearly

1 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
2 specify, for each portion, the level of protection being asserted.

3 (b) Testimony given in deposition or in other pretrial proceedings: the parties
4 and any participating non-parties must identify on the record, before the close of the deposition or
5 other pretrial proceeding, all protected testimony and specify the level of protection being asserted,
6 without prejudice to their right to so designate other testimony after reviewing the transcript. Any
7 Party or Non-Party may, within fifteen days after receiving the transcript of the deposition or other
8 pretrial proceeding, designate portions of the transcript, or exhibits thereto. If a party or non-party
9 desires to protect Protected Material at trial, the issue should be addressed during the pre-trial
10 conference.

11 (c) Other tangible items: the Producing Party must affix in a prominent place
12 on the exterior of the container or containers in which the information or item is stored the word
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a
14 portion or portions of the information or item warrant protection, the producing party, to the extent
15 practicable, shall identify the protected portion(s) and specify the level of protection being
16 asserted.

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
18 designate qualified information or items does not, standing alone, waive the Designating Party’s
19 right to secure protection under this Stipulation and Order for such material. Upon timely
20 correction of a designation, the Receiving Party must make reasonable efforts to ensure that the
21 material is treated in accordance with the provisions of this Stipulation and Order.

22 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
24 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
25 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
26 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
4 regarding confidential designations without court involvement. Any motion regarding
5 confidentiality designations or for a protective order must include a certification, in the motion or
6 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
7 conference with other affected parties in an effort to resolve the dispute without court action. The
8 certification must list the date, manner, and participants to the conference. A good faith effort to
9 confer requires a face-to-face meeting, remote video conference, or a telephone conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
11 intervention, the Designating Party may file and serve a motion to retain confidentiality under
12 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
13 persuasion in any such motion shall be on the Designating Party. Frivolous challenges, and those
14 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
15 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
16 the material in question as confidential until the court rules on the challenge.

17 7. PROSECUTION BAR

18 Absent written consent from the Producing Party, any individual who receives access to
19 another Party's or Non-Party's "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
20 information shall not be involved in the prosecution of patents or patent applications relating to
21 the subject matter of this action. For purposes of this paragraph, "prosecution" includes directly or
22 indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent
23 claims. To avoid any doubt, "prosecution" as used in this paragraph does not include representing
24 or assisting a party challenging or defending a patent before a domestic or foreign agency
25 (including, but not limited to, a reissue, *ex parte* reexamination, *inter partes* review, covered
26 business method patent review, or post grant review) even if claims are drafted or amended

1 provided that the individual does not draft the claims or the amendment or provide input on the
2 drafting of the claims or the amendment. This Prosecution Bar shall begin when access to
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information is first received by the
4 affected individual and shall end two (2) years after final termination of this action.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
6 LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation that compels
8 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Party must:

10 (a) promptly notify the Designating Party in writing and include a copy of the
11 subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or order to
13 issue in the other litigation that some or all of the material covered by the subpoena or order is
14 subject to this Stipulation and Order. Such notification shall include a copy of this Stipulation and
15 Order; and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued by
17 the Designating Party whose confidential material may be affected.

18 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
20 Material to any person or in any circumstance not authorized under this Stipulation and Order, the
21 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
22 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
23 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
24 Stipulation and Order, and (d) request that such person or persons execute the “Acknowledgment
25 and Agreement to Be Bound” that is attached hereto as Exhibit A.

26 9. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

1 When a Producing Party gives notice to a Receiving Party that certain produced material
2 is subject to a claim of privilege or other protection, the obligations of the Receiving Party are
3 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
4 modify whatever procedure may be established in an e-discovery order or agreement that provides
5 for production without prior privilege review. The parties agree to the entry of a non-waiver order
6 under Fed. R. Evid. 502(d) as set forth herein.

7 10. NON TERMINATION AND RETURN OF DOCUMENTS

8 Within 60 days after the termination of this action, including all appeals, each Receiving
9 party must return all Protected Material to the Producing party, including all copies, extracts and
10 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

11 Notwithstanding this provision, Outside Counsel of Record are entitled to retain one
12 archival copy of all documents filed with the court, trial, deposition, and hearing transcripts,
13 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
14 and expert work product, even if such materials contain Protected Material.

15 The confidentiality obligations imposed by this Stipulation and Order shall remain in effect
16 until a Designating Party agrees otherwise in writing or a court order otherwise directs.

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 DATED: January 31, 2023

19 COOLEY LLP

21 *s/ Jeffrey Lombard*

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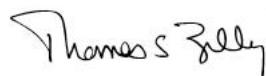
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
4 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
5 documents, including the attorney-client privilege, attorney work-product protection, or any other
6 privilege or protection recognized by law.

7
8 DATED: February 1, 2023



20 Hon. Thomas S. Zilly
21 United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____ in the case of *Group14 Technologies, Inc. v. Nexeon Limited*, Case No. 2:22-cv-01354-TSZ. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: